

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK-----X
JASON M. SMITH,

Plaintiff,

-against-

JIMMY GUTIERRES, et al.,

Defendants.

21-CV-6086 (RA) (OTW)

ORDER-----X
ONA T. WANG, United States Magistrate Judge:

The Court is in receipt of ECF 108 and 109, wherein Selina Livingston moves pursuant to Fed. R. Civ. P. 25(a)(1) to substitute as Plaintiff in this matter on behalf of Jason Smith's minor child, JMS. Because Plaintiff was unmarried and JMS is Plaintiff's only child, under New York's intestacy laws, JMS stands to inherit Plaintiff's entire estate and is a primary beneficiary of Plaintiff's estate; i.e., JMS is the only proper party that may substitute for Plaintiff. *See* N.Y. Est. Powers & Trusts § 4-1.1(3). (*See also* ECF 97). Ms. Livingston, as the mother and legal guardian of JMS, is eligible to substitute for Plaintiff on behalf of JMS. *See Claire H. v. Dudek*, 22-CV-409 (LFG), 2025 WL 762294, at *5 (W.D.N.Y. Mar. 11, 2025); *Sue B. v. Commissioner of Social Security*, 21-CV-259, 2023 WL 1109741, at *2 (W.D.N.Y. Jan. 30, 2023) (holding the legal guardian of three minor children was the "proper party for substitution to represent Plaintiff's claim on behalf of Plaintiff's children").

Accordingly, Ms. Livingston's motion to substitute as Plaintiff in this action is **GRANTED**. The Clerk of Court is respectfully directed to substitute Selina Livingston, on behalf of JMS, as Plaintiff, and to amend the case caption.

The Clerk of Court is respectfully directed to close ECF 108

SO ORDERED.

s/ Ona T. Wang

Dated: July 2, 2025
New York, New York

Ona T. Wang
United States Magistrate Judge